IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 29TH AUGUST 2006 / 7TH BHADRA 1928

OP.No. 12863 of 1999(F)

PETITIONER:

K.FOUSIYA, BRANCH MANAGER, MANJERI CO-OPERATIVE URBAN BANK LTD.NO.1726, EDAVANNAPPARA BRANCH, MALAPPURAM DISTRICT.

BY ADV. SRI.A.A.ABUL HASSAN

RESPONDENTS:

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1. STATE OF KERALA, REP. BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF CO-OPERATION, THIRUVANANTHAPURAM.

2. REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM.

3. SECRETARY, MANJERI CO-OPERATIVE URBAN BANK LTD.NO.1726, MANJERI.

R1 & R2 BY SR.GOVERNMENT PLEADER SRI.JAMES MATHEW KADAVAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON ON 29/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.12863/1999

ORDER ON CMP.20655/1999 IN O.P.12863/1999

DISMISSED

29.8.2006 SD/-PIUS C.KURIAKOSE, JUDGE

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF THE MANJERI CO-OP. URBAN BANK DT.31.5.97

EXT.P2 – TRUE COPY OF LETTER DT.13.7.98 ISSUED BY R2.

EXT.P3 – TRUE COPY OF APPEAL FILED BY PETR. BEFORE R1 DT.12.8.98

EXT.P4 – TRUE COPY OF JUDGMENT IN OP.16484/98 DT.26.8.98 PASSED BY THIS COURT.

EXT.P5 – TRUE COPY OF REQUEST DT.5.7.95 MADE BY THE MANJERI CO-OP. URBAN BANK LTD.

EXT.P6 – TRUE COPY OF ORDER DT.7.5.98 ISSUED BY R2.

EXT.P7 – TRUE COPY OF ORDER DT.28.4.99 ISSUED BY R1.

EXT.P8 – TRUE COPY OF LETTER DT.8.8.98 ISSUED BY R3.

EXT.P9 – TRUE COPY OF ORDER DT.10.2.99 ISSUED BY THE REGISTRAR OF CO-OP. SOCIETIES, THIRUVANANTHAPURAM.

EXT.P10 – TRUE COPY OF CERTIFICATE DT.25.9.02 ISSUED BY THE MANJERI CO-OP. URBAN BANK LTD.

EXT.P11 – TRUE COPY OF RELEVANT PAGE OF SSLC BOOK OF SMT.SHERLY GEORGE.

EXT.P12 – TRUE COPY OF THE BIO DATA SUBMITTED BY SMT.SHERLY GEORGE BEFORE R3.

EXT.P13 – TRUE COPY OF CERTIFICATE ISSUED BY R3 DT. NIL.

1ST RESPONDENT'S EXTS:

EXT.R1(a) – TRUE COPY OF GO.MS.16/89 DT.22.3.1989

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.12863 OF 1999

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DATED THIS THE 29TH AUGUST, 2006

J U D G M E N T

The petitioner presently works as Branch Manager of the Manjeri Co-operative Urban Bank in its branch at Edavannappara. Her date of birth is 25.5.1966. Her academic qualification is S.S.L.C. only and she has Junior Diploma in Co-operation also. She was appointed in the bank as a Clerk and she joined service on 25.6.1984. On 1.6.1991 she was promoted as Senior Clerk and thereafter on 1.12.1992 again promoted as Senior Accountant. The next post for promotion is that of Branch Manager. She refers to Rule 186 of the Kerala Co-operative Societies Rules (hereinafter referred to as 'the Rules') which prescribes the following qualifications for promotion to the post of Manager:- A Degree in Commerce or Masters Degree in Arts of a recognised University, with Co-operation as special subject; or Degree and Higher Diploma in Co-operation; or Diploma in Rural Services with Co-operation as optional subject; or B.Sc. (Co-operation and Banking) from the Kerala Agricultural University. She then quotes Rule 185 dealing with promotions as follows:-

> "Promotions:- (1) Appointments to higher categories of service in a Society shall ordinarily be made by

promotion from among members eligible for appointment to such category in accordance with these rules on the basis of seniority in the feeder category. The feeder category for this purpose shall be prescribed by the society by framing suitable subsidiary regulations with the approval of the Registrar.

(2) It shall be competent for the committee of a society to relax the qualification of an employee, whether appointed before or after the commencement of these rules, for the purpose of promotion, in deserving cases, with prior approval of the Registrar and for reasons to be recorded."

She accordingly points out that the Committee of the bank is competent to relax the qualification of an employee for the purpose of promotion with prior approval of the Registrar. She then produces as Ext.P1, copy of the resolution dated 31.5.1997 of the Board of Directors of the bank by which the Board resolved to promote the petitioner who was then the seniormost Accountant in the services of the bank with a meritorious and unblemished record of service as Branch Manager, in spite of her not possessing a degree, by relaxing

the qualifications as provided under Rule 185(2). In fact, pursuant to Ext.P1, the petitioner, along with two others, was promoted and posted as Branch Manager. But the 2nd respondent-Registrar issued Ext.P2 letter dated 13.7.1998 rejecting the request of the bank to grant approval to the promotion given to the petitioner. She preferred Ext.P3 appeal before the 1st respondent-Government. This Court directed the Government under Ext.P4 judgment to dispose of Ext.P3 at the earliest and to keep in abeyance Ext.P2 till then. One of the grounds raised by the petitioner in Ext.P3 appeal was that the 2nd respondent-Registrar had given approval to similar promotions given by the bank to other incumbents, in relaxation of the qualifications under Rule 185. Exts.P5 and P6 issued by the Registrar in respect of one Sherly George and K.P.Gangadharan, both employees of the very same bank who were promoted as Branch Managers, are relied on in this context. The petitioner states that though Exts.P5 and P6 were brought to the notice of the Government, Government rejected Ext.P3 by its order Ext.P7 dated 28.4.1999. Upon Ext.P7 the bank has issued Ext.P8 order dated 8.8.1998 calling upon the petitioner to show cause as to why promotion already given to her shall not be cancelled and the excess salary received by her from 2.6.1997 as Branch

Manager shall not be recovered. But the petitioner points out that considering Ext.P4 judgment of this Court, the bank has not so far implemented Ext.P2 and she even now continues as Branch Manager. The petitioner impugns Exts.P2, P7 and P8 on various grounds and prays in the Original Petition that Exts.P2, P7 and P8 be quashed and that an order declaring that the petitioner is eligible for relaxation of qualification for promotion as Branch Manager be issued.

2. The Government has filed a detailed counter affidavit, justifying the stand of the Registrar and its own order approving the Registrar's order. As regards the approval given to the promotions given to Smt.Sherly George and Sri.K.P.Gangadharan of the bank, it is contended that those promotions were approved by the Registrar as per the then Rule 185(2) of the Rules by using the discretionary power conferred on him. Relaxation was given to those two incumbents vide Ext.P6 order as they possessed two out of the three conditions prescribed for granting exemption under Rule 185(2). But in the case of the petitioner, she satisfied only one out of the three conditions prescribed. Ext.R1(a) is copy of G.O.(MS)No.16/89/Co-op. dated 22.3.1989, guidelines for granting exemption under Rule 185 (2). Ext.P2 order was passed in conformity with Ext.R1(a) order and

therefore the same is quite proper. Ext.P7 order also, it is contended, is quite maintainable since the bank had not obtained prior sanction to promote the petitioner to a post to which she was not qualified. Promotion was given to the petitioner on 2.6.1997. The proposal for relaxation in qualification was submitted to the Registrar only thereafter. The petitioner satisfied only one out of the three conditions for giving relaxation unlike the other two incumbents referred to by her. As regards Ext.P2 order, it is further contended that it is neither discretionary nor violative of any of the Constitutional provisions. It is an order issued under the discretionary power vested in the 2nd respondent as per Rule 185.

3. The 2nd respondent-Registrar also has filed a detailed counter affidavit justifying his own order and the Government's order. All the contentions raised by the Government in its counter affidavit are seen endorsed through this counter affidavit.

4. Separate reply affidavits have been filed by the petitioner reiterating her grounds and repudiating the contentions raised in the counter affidavits. Along with the reply affidavit filed in answer to the counter affidavit of the 2nd respondent-Registrar, she has produced copy of yet another order passed by the Registrar on 10.2.1999 as

Ext.P9. Ext.P9 is an order by which the Registrar has given approval to the promotion given to one Shafeekh as Branch Manager of Kottakkal Urban Co-operative Bank Ltd. No.1378. This order will show that Shafeekh was promoted on 30.8.1997 by that bank. But resolution was adopted by the Director Board of that bank only on 14.5.1998 to request the Registrar to approve the promotion with effect from 30.8.1997 and that request was accepted by the Registrar. This reply affidavit reiterates that the petitioner's case was exactly similar to that Smt.Sherly George and Sri.K.P.Gangadharan.

5. Along with the reply affidavit filed to the counter affidavit of the Government, the petitioner has produced Ext.P10 certificate issued on 25.9.2002 by the bank in respect of promotion given to Sherly George. This certificate shows that Sherly George had passed SSLC examination and JDC only when she was promoted as Branch Manager. This certificate will further show that Smt.Sherly George had not attained 45 years of age nor had she five years' service in the feeder category, viz. the post of Accountant, when she was promoted. In other words, this certificate will show that Smt.Sherly George also did not have two out of the three qualifications mentioned in the Government Order Ext.R1(a).

6. When arguments were heard on 10.8.2006, the issue whether Smt.Sherly George and Sri.K.P.Gangadharan possessed two out of the three conditions prescribed for granting exemption under Ext.R1(a) as against the petitioner who possessed only one out of three conditions became contentious. Upon the learned counsel for the petitioner asserting that at least Smt.Sherly George had satisfied only one condition, viz., pass in JDC, I directed him to produce reliable evidence in that context. Accordingly the petitioner filed I.A.No.11774 of 2006 producing three documents. Ext.P11 is true copy of the relevant page of the SSLC book relating to Smt.Sherly George which will show that her date of birth is 31.5.1964. Ext.P6 order is dated 7.5.1996 and it is now clear that on the date when Sherly George's promotion was approved by the 2nd respondent, she had not completed 45 years of age. Ext.P12 is copy of the bio-data furnished by Sherly George before the bank. As per Ext.P12 also, the date of birth of Smt.Sherly George is 31.5.1964. Ext.P13 is another document produced by the petitioner. It is a certificate issued by the bank. This certificate shows that Smt.Sherly George was promoted as Branch Manager at the age of 32 years. In fact, on 10.8.2006, I passed an order directing the Government Pleader to verify with the concerned

and submit as to whether the assertion of the petitioner that Smt.Sherly George was also below the age of 45 years while she was granted exemption is correct. Significantly, the Government Pleader did not raise any opposition regarding the facts disclosed by Exts.P11, P12 and P13.

7. Sri.A.A.Abul Hassan, Advocate addressed me on behalf of the petitioner and Sri.James Mathew Kadavan addressed me on behalf of the Government as well as on behalf of the 2nd respondent-Registrar.

8. Making elaborate submissions on the basis of the pleadings raised and the documents produced, Mr.Hassan referred to Rule 185, Rule 186 and particularly to Rule 185(2) and Rule 185(8). He also drew my attention to Exts.P1, P2, P3, P5, P8, P9, P10, P11 and P12.

9. Mr.Kadavan, Government Pleader making submissions on the basis of the counter affidavit submitted by the Government and the Registrar would try to justify the orders passed by the Registrar and the Government by referring to Rule 185(8).

10. Having considered the rival submissions made at the Bar in the light of the pleadings raised by the parties and the materials placed on record by them, I do not find any reason as to why relief should not be granted to the petitioner. The question whether the Government is

competent to impose further restrictions on the powers of the Registrar to grant approval to the proposal by the societies to give promotions to their employees by relaxation of the prescribed qualifications through executive orders need not be considered in this case. The Registrar has granted approval to the promotions given to Smt.Sherly George and Sri.Gangadharan by relaxing the prescribed qualifications while approval was declined in the case of the petitioner. This action is being justified on the reason that out of the three qualifications prescribed by Ext.R1(a) guidelines, the petitioner had only one qualification while the other two persons were having two qualifications. Exts.P10, P11, P12 and P13 will clearly show that Smt.Sherly George had only one out of the three qualifications which are prescribed by Ext.R1(a) guidelines. If that be so, the grievance of the petitioner that she has been discriminated in the matter of granting approval to the promotion given by the Managing Committee of the bank has to be found to be a genuine one.

11. Yet another reason which is pointed out by the respondents to justify the different treatment which has been given to the petitioner is that in her case the Director Board of the bank promoted her without obtaining prior approval of the Registrar and that approval

was sought only subsequently. True, sub-rule (2) of Rule 185 says that what is contemplated is prior approval of the Registrar. But I find that in the Department there is the practice of giving promotions first and then applying for approval from the Registrar. Ext.P9 placed on record by the petitioner is an order passed by the Registrar in the case of one K.Shafeekh, Accountant of the Kottakkal Co-operative Urban Bank who was promoted by the bank by relaxing the prescribed qualifications. It is seen from Ext.P9 that the Registrar has granted approval notwithstanding the fact that approval was sought for only after promotion was given. It is not in dispute that at the time when the petitioner was given promotion, she was the seniormost incumbent in the feeder category. The Board of Directors of the bank taking into account the performance of the petitioner hitherto resolved to grant her promotion. If approval could have been given to similarly circumstanced Sherly George of the same bank and Shafeekh of a similar bank, there was no reason as to why approval should not be given to the promotion given to the petitioner.

The result of the above discussion is that the Original Petition will stand allowed. There will be a declaration that the petitioner is also eligible for relaxation of the qualification in the matter of promotion as

Branch Manager, as in the case of Mr.Shafeekh of the Kottakkal Urban Co-operative Bank and Smt.Sherly George of the 3rd respondent-bank itself. Exts.P2, P7 and P8 are quashed. There will be a direction to the 2nd respondent to reconsider the question of granting approval to Decision No.396 dated 31.5.1997 of the Director Board of the bank favourably and issue fresh orders. Fresh orders as directed above will be passed by the 2nd respondent at the earliest and at any rate within one month of receiving copy of this judgment. The parties will bear their respective costs.

(PIUS C. KURIAKOSE, JUDGE)

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